Tentative Rulings for August 27, 2015
Departments 402, 403, 501, 502, 503

There are no tentative rulings for the following cases. The hearing will go forward on these matters. If a person is under a court order to appear, he/she must do so. Otherwise, parties should appear unless they have notified the court that they will submit the matter without an appearance. (See California Rules of Court, rule 3.1304(c).)

12CECG03896 ***Melvin Imai vs. Leo Wilson Co.*** **(Dept. 402)**

The court has continued the following cases. The deadlines for opposition and reply papers will remain the same as for the original hearing date.

13CECG03701 ***Howard v. Milcogeneral, Inc.*** **(Dept. 403) [Hearing on motion for summary judgment is continued to September 24, 2015, at 3:30 p.m. in Dept. 403]**

15CECG00160 ***Jorge Gonzalez v. Carlos Lopez*** **is continued to Thursday, September 3, 2015 at 3:30 p.m. in Dept. 503.**

15CECG00659 ***Reyes v. Barnell*** **is continued to Thursday, September 10, 2015, at 3:30 p.m. in Dept. 402.**

(Tentative Rulings begin at the next page)

Tentative Rulings for Department 402

(28) ***Tentative Ruling***

Re: **Millennium Acquisitions, LLC, et al. v. Levinson, et al.**

Case No. 15CECG01815

Hearing Date: August 27, 2015 (Dept. 402)

Motion: By Defendants Geoshua Levinson and West Coast CASp and ADA Services, Inc., Demurring to Plaintiffs' Complaint.

Tentative Ruling:

To sustain the Demurrer as to the entire Complaint with respect to Defendant West Coast CASp and ADA Services, Inc. with leave to amend. To sustain the Demurrer as to the First Cause of Action with leave to amend. To overrule the demurrer to the Second Cause of Action for trespass. Plaintiff shall have twenty (20) days in which to amend the complaint. All new allegations must be in **boldface** type.

Explanation:

A general demurrer admits the truth of all material allegations and a Court will "give the complaint a reasonable interpretation by reading it as a whole and all its parts in their context." (*People ex re. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 300.)

California Business and Professions Code §17200.

California Business and Professions Code section 17200 prohibits unfair competition, including "unlawful, unfair or fraudulent business act or practice."

The Complaint alleges that Defendants' actions are unlawful because they run afoul of regulations promulgated pursuant to the California Voluntary Certified Access Specialist Program (or "CASp"). (21 CCR §111, *et seq.*).[1]

The regulation sets up a system whereby people may become licensed to conduct inspections for compliance with federal and state disability access

[1] Because the Plaintiff did not rely on the trespass claim to support its 17200 cause of action, the Court expresses no opinion on whether the factual allegations of trespass would withstand demurrer as to the First Cause of Action.

statutes and regulations. The regulations and statutes provide for training and licensing by the State Architect. The CASp can provide a report of compliance or non-compliance with the applicable statutes and regulations.

The purpose of the investigation, in part, is to allow defendants to stay lawsuits for compliance with such regulations and request an "early evaluation" conference. (Cal.Civ.Code §55.53.)

Note that CCC§55.53, subdivision(d)(3) provides "Nothing in this subdivision shall preclude permit applicants or any other person with a legal interest in the property from retaining a private CASp at any time."

The use of a CASp is voluntary, and failure to use one is not to be used in evidence. (*Id.* at subdivision (f).)

The thrust of these regulations is that CASp's are authorized to prepare reports that provide a measure of a defense to property owners and serve an important procedural purposes in lawsuits regarding disability access.

In order to run afoul of the regulation itself, Plaintiffs would have to allege that Defendant violated the regulation and the supporting statutes. However, Defendants are correct in stating that there is nothing in the regulations as presented to the Court that restricts CASp's, once they are certified by the State, solely to performing such assessments for CASp reports pursuant to Civil Code §55.53. Nothing in the regulations presented to the Court prevents individuals certified as CASp's from performing assessments outside of the CASp regulatory scheme. There is likewise nothing in the Complaint that alleges that any reports prepared by Defendant without "authorization" were intended to have the procedural effects contemplated by the statute. (Cal.Civ.Code §55.53, subd.(c).) Therefore, the facts, as pleaded, do not show that Defendants' actions were unlawful.

The facts contained in the Complaint also do not show that Defendant's acts were "unfair." It is true that a practice is unfair if it is "immoral, unethical, oppressive, unscrupulous, or substantially injurious." (*Drum v. San Fernando Valley Bar Ass'n* (2010) 182 Cal.App.4th 247, 256-57.) However, whether a practice is unfair "involves an examination of [that practice's] impact on its alleged victim, balanced against the reasons, justifications, and motives of the alleged wrongdoer. In brief, the court must weigh the utility of the defendant's conduct against the gravity of the harm to the alleged victim." (*Nolte v. Cedars Sinai Med. Center* (2015) 236 Cal.App.4th 1401, 1407-08.) It is normally not a determination that can be made on demurrer. (*Id.* at 1408.) However, there are no allegations in the Complaint that the impact on the Plaintiffs outbalanced the utility of Defendants' actions. Absent such factual allegations, Plaintiffs have simply not stated a valid cause of action on this prong.

Finally, Plaintiffs allege that Defendants' actions are "fraudulent." However, in order to be "fraudulent," the impact must be on the reasonable

consumer, not on the property owners themselves (unless Plaintiffs were somehow consumers of Defendants' services). (*Id.* at 1409 (the test is whether the public is likely to be deceived).) Plaintiffs have not alleged that the public is likely to have been deceived by Defendants' activities. Therefore, Plaintiffs have not stated a cause of action with respect to this prong of section 17200 either.

Therefore, the Demurrer should be sustained as to the first cause of action with leave to amend.

Trespass Claim

"The essence of the cause of action for trespass is an "unauthorized entry" onto the land of another. (*Donahue Schriber Realty Group, Inc. v. Nu Creation Outreach* (2014) 232 Cal.App.4th 1171, 1177-78.) Here, Plaintiffs alleged that Defendants were not given permission to enter Plaintiffs' property for inspections. (Complt. ¶¶ 14 and 34.) This, although alleged with a paucity of facts, would seem to meet the bare criteria of a trespass. (*Donahue Schriber Realty Group, supra*, 232 Cal.App.4th at 1178 (consent to entry may be revoked, or trespass may occur if defendant goes beyond the scope of the consent). Defendants' arguments regarding the scope of consent and their revocation are better addressed to a factual inquiry at a later date. (*Cf. Spinks v. Equity Residential Briarwood Apartments* (2009) 171 Cal.App.4th 1004, 1043 (whether consent given is a question of fact).

Defendant West Coast

However, Defendants are correct to note that that there are no specific allegations directed towards co-defendant West Coast CASp and ADA Services, Inc. ("West Coast") which was added to the Complaint by "Doe" amendment. The only allegations concerning "Does" occurs in Paragraphs 6 and 7. The Demurrer is therefore sustained with leave to amend to include allegations regarding Defendant West Coast and its involvement, if any, in the causes of action.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JYH on 8/25/2015.
(Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***Bowles v. Munk et al.***
Superior Court Case No. 13 CECG 03535

Hearing Date: August 27, 2015 **(Dept. 402)**

Application: "Prove Up Quiet Title Action"

Tentative Ruling:

To deny the application for a "default prove-up" with prejudice. CCP § 764.010 prohibits the entry of judgment via default in a quiet title action. This matter must be set for trial.

The court orders the Plaintiff:

1. To join as defendants, Leslie Kepler and Suzanne Kepler, or their heirs, personal representatives, etc.
2. To join as defendants, the known heirs, successors in interest, etc. of Albert Van Der Linden and Maren K. Van Der Linden.

Explanation:

On November 12, 2013, Plaintiff Sherron A. Bowles aka Sharon A. Bowles filed a **verified** complaint seeking to quiet title to two parcels of land located in Fresno County. See Exhibit A attached thereto for the legal description. According to the complaint, on or about 1973, James A. Munk and Gladys E. Munk, husband and wife, as joint tenants, owned a 50% undivided interest in these parcels. Albert Van Der Linden and Maren K. Van Der Linden, husband and wife, as joint tenants, owned the remaining 50% interest.

On or about January 1, 1973, **Leslie Kepler, Suzanne Kepler**, Robert Bowles and Sherron Bowles and the Munks and the Van Der Lindens entered into a contract for sale of the parcels for $18,000 to be paid in monthly installments until paid in full. The contract was recorded on February 13, 1973. See Exhibit B attached to the Complaint. The Plaintiff asserts that all payments and property taxes required by the contract have been paid by the Keplers and the Bowles until 1976 when it was agreed by the **Keplers** and the Bowles that the Bowles would acquire the property as long as they paid the property taxes. For reasons unknown, the Deed of Trust was never presented to the Bowles and the title remained in the names of the Munks and the Van Der Lindens.

Plaintiff seeks to quiet title to the property. On June 26, 2014, the Plaintiff first application seeking a default judgment was heard. The Court denied the application. It noted that Plaintiff had failed to file a lis pendens. See CCP §

761.010(b). Second, it determined that she had not named James P. Cantillon, who holds a first deed of trust on the property to as a Defendant according to page 6 of the recorded contract for sale attached as Exhibit B. Third, it failed to join as defendants, the known heirs, successors in interest, etc. of Albert Van Der Linden and Maren K. Van Der Linden. Fourth, it failed to procure a title report and designate a place in the city of Fresno where it shall be kept for inspection, use and copying by the parties. Finally, Plaintiff neglected to publish the summons in the Fresno Bee—the county where the property is located.

Now, Plaintiff has renewed the application. Plaintiff indicates that a litigation guarantee was obtained from Stewart Title Co. It indicates that no party holds a First Deed of Trust on the property. See Declaration of Vogt at ¶ 10b. This is sufficient.

But, the Plaintiff has not provided a sufficient explanation for failure to comply with CCP § 762.030. See Declaration of Vogt at ¶ 10c. Plaintiff relies heavily upon the fact that no one has filed an answer to the complaint. Id. But, this ignores that the summons was served via publication. Service by publication is not adequate notice for due process purposes for defendants whose *whereabouts are known, and* who therefore could be notified by means such as personal service or mail. [*Mennonite Board of Missions v. Adams* (1983) 462 US 791, 795, 103 S.Ct. 2706, 2710; see also *Tulsa Professional Collection Services, Inc. v. Pope* (1988) 485 US 478, 491, 108 S.Ct. 1340, 1348]

Importantly, the court will order the summons published in a designated newspaper that is "most likely to give actual notice" to the defendant. [CCP § 415.50(b)] The requirement of publication in a newspaper **"most likely to give actual notice"** (CCP § 415.50(b)) is not met if plaintiffs *know* defendant is not in the locale where the newspaper is published. [*Olvera v. Olvera*, supra, 232 CA3d at 43, 283 CR at 278—publication in Riverside newspaper insufficient because P knew D had left Riverside and was living in vicinity of Pismo Beach]

Plaintiff offers no explanation as to where the heirs are located and whether publication in the Artesia and Fresno would satisfy the due process requirements. If the heirs are truly disinterested, they should file Answers disclaiming any interest. Finally, Plaintiff offers no explanation as to why the Keplers or their heirs, etc. were not named as Defendants. Apparently, it was the responsibility of the Keplers to transfer their share of the property to the Bowles per the agreement that the Bowles pay the property taxes and the full amount of the monthly installments. See Declaration of Bowles at ¶6. This was not done. Therefore, the Keplers maintain an interest in the property (at least on paper) and should have been named Defendants.

Again, the Court determines that this is **not** a default case. According to one line of cases, **the statutory prohibition (CCP § 764.010) on quiet title default judgments** is *absolute*, precluding not only traditional default prove-ups but also imposing a complete ban on any judgments by default. In other words, plaintiffs not only must prove their cases in *evidentiary hearings* with live witnesses and

any other admissible evidence but, unlike ordinary default prove-ups in which the defendants have no right to participate, courts must *in all cases* hear such evidence as may be offered by any defaulting defendant. [See *Nickell v. Matlock* (2012) 206 CA4th 934, 941–942, 947, 142 CR3d 362, 366–367, 371—if defaulting defendant "shows up" before judgment is entered, court must hear any evidence defendant offers; see also *Harbour Vista, LLC v. HSBC Mortg. Services Inc.* (2011) 201 CA4th 1496, 1501–1504, 134 CR3d 424, 428–430, 433–434—court renders judgment "in accordance with the evidence and the law" if it holds properly noticed evidentiary hearing and no defendant shows up]

Dicta in another case, however, maintains that the **quiet title** statutes merely subject plaintiffs in default cases to a *higher evidentiary standard* at the prove-up hearing than applicable in general civil actions. Thus, while still requiring a *full evidentiary hearing*, this authority permits courts to enter **quiet title** default judgments. [See *Yeung v. Soos* (2004) 119 CA4th 576, 580–581, 14 CR3d 502, 505 (finding statutory prohibition re **quiet title** default judgments an apparent "misnomer")] However, *Yeung* did not address whether defaulting defendants may participate in evidentiary hearings under § 764.010; it only decided that full evidentiary hearings are required (i.e., plaintiffs must produce competent evidence of title by way of live testimony and authenticated real property records). Moreover, the "higher prove-up burden" advocated in *Yeung* has been criticized as "erroneous" **dicta**. [See *Nickell v. Matlock*, supra, 206 CA4th at 947, 142 CR3d at 371—"We agree with *Harbour Vista* that the dicta in *Yeung* is erroneous"] Accordingly, the Court orders that this case will not proceed via default prove up and must be set for trial.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: JYH on 8/26/15 .

(Judge's initials) (Date)

Tentative Rulings for Department 403

(27) **Tentative Ruling**

Re: ***Mills v. City of Clovis***
Superior Court Case No. 13CECG03631

Hearing Date: **August 27, 2015 (Dept. 403)**

Motion: Defendant's motion for summary judgment/adjudication

Tentative Ruling:

To Deny. Plaintiff's objections are overruled. The Defendant's reply objections are sustained.

Explanation:

Summary Judgment

"'Summary judgment is granted when there is no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law.'" (*Lopez v. Superior Court* (1996) 45 Cal.App.4th 705, 713, quoting § 437c, subd. (c) To prevail in a motion for summary judgment, it is defendant's burden to prove there is a complete defense or that plaintiff cannot establish one or more elements of each of his causes of action. (*Barber v. Marina Sailing, Inc.* (1995) 36 Cal.App.4th 558, 562.) To show that plaintiff cannot establish his claims, defendant may either (1) affirmatively negate one or more elements of each claim, or (2) by relying on plaintiff's inadequate discovery responses, show that plaintiff does not possess and cannot reasonably obtain needed evidence. (*Aguilar v. Atlantic Richfield* (2001) 25 Cal.4th 826, 855.)

The ultimate burden of persuasion rests on defendant, as the moving party. The initial burden of production is on defendant to show by a preponderance of the evidence, that it is more likely than not that a given element cannot be established or that a given defense can be established. (*Aguilar*, *supra*, 25 Cal.4th at 850.)

If defendant carries this initial burden of production, the burden of production shifts to plaintiff to show that a triable issue of material fact exists. Plaintiff does this if he can show, by a preponderance of the evidence, that it is more likely than not that a given element can be established or that a given defense cannot be established. (*Aguilar*, *supra*, 25 Cal.4th at 850, 852; see also *Walter E. Heller Western, Inc. v. Tecrim Corp*. (1987) 196 Cal.App.3d 149, 156 [single issue of fact requires the issue to be tried].)

Merits

In this case, the evidence set forth in City of Clovis' ("City") Separate Statement of Material Facts states that City's Parks Manager, Eric Aller, was unaware of any reports from City's landscaping contractor ACLS which indicated a hazard on the subject section of sidewalk. (see SSUMF, 21 citing Ex. F, pg. 38:19-23.) The ACLS workers regularly mowed alongside the subject section of sidewalk. (see Dep. of Charles Bennet, pg. 16:1-12.) Also, City's motion includes a declaration by their Street Maintenance Manager who declares that he searched the respective database but did not find an entry for the subject section of sidewalk. (see Dec. of Jim Chase, ¶5.) Such evidence is sufficient to shift the burden to the plaintiff. (*Heskel v. City of San Diego* (2014) 227 Cal.App.4th 313, 319-321.)

The plaintiff's Disputed Material Facts ("DMF") asserts that Eric Aller (the Parks Manager) did not specifically instruct ACLS to report all hazards. (see DMF, 32.) Consequentially, unlike *Heskel*, where there was no reported hazard by the city workers themselves, here there is no evidence that the ACLS employees working in the area did not observe the subject condition or had a means to the report the condition if they did. Specifically, the contract did not contain a provision to report hazards. Additionally, where Charles Bennett himself "probably" would have reported a hazard, there was no specific instruction for ACLS employees to do so. Thus, there remains a triable issue of fact as to whether the channels of communication between the ACLS employees and City was sufficient to discharge the City's statutory obligations. The plaintiff has met their burden and the motion for summary judgment/adjudication is denied.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: KCK on 08/26/15 .
(Judge's initials) (Date)

Tentative Rulings for Department 501

(23)

Tentative Ruling

Re: ***David W. Edwards v. City of Clovis***
Superior Court No. 14CECG01339

Hearing Date: Thursday, August 27, 2015 (**Dept. 501**)

Motion: Defendant City of Clovis' Motion for Summary Judgment, or, in the Alternative, Summary Adjudication of Issues

Tentative Ruling:

To continue Defendant City of Clovis' motion for summary judgment, or, in the alternative, summary adjudication of issues from Thursday, August 27, 2015 to Thursday, September 24, 2015.

To permit Plaintiff David W. Edwards to file a maximum 5-page supplemental memorandum of points and authorities addressing any new issues raised in Defendant City of Clovis' reply memorandum of points and authorities, any new evidence responding to the supplemental declaration of Lori Shively, and any objections to the supplemental declaration of Lori Shively by Friday, September 4, 2015 at 12:00 p.m. Plaintiff David W. Edwards is directed to serve any supplemental papers on Defendant City of Clovis in such a manner that Defendant City of Clovis receives the supplemental papers by end of business on Friday, September 4, 2015.

To permit Defendant City of Clovis to file a maximum 5-page supplemental memorandum of points and authorities responding to Plaintiff David W. Edwards' supplemental memorandum of points and authorities and any objections to Plaintiff David W. Edwards' new supplemental evidence by Wednesday, September 9, 2015 at 12:00 p.m. Defendant City of Clovis is directed to serve any supplemental papers on Plaintiff David W. Edwards in such a manner than Plaintiff David W. Edwards receives the supplemental papers by end of business on Wednesday, September 9, 2015.

Explanation:

In its reply, Defendant City of Clovis ("Defendant") submitted the supplemental declaration of Lori Shively. "[T]he trial court's consideration of [additional evidentiary matter filed in reply] is not an abuse of discretion so long as the party opposing the motion for summary judgment has notice and an opportunity to respond to the new material." (*Plenger v. Alza Corp.* (1992) 11 Cal.App.4th 349, 362, fn. 8.)

Hence, the Court continues the hearing on Defendant's motion for summary judgment or, in the alternative, summary adjudication of issues to give Plaintiff David W. Edwards ("Plaintiff") notice that the Court intends to allow and consider the supplemental declaration of Lori Shively in deciding Defendant's motion and to give Plaintiff an opportunity to respond to the supplemental declaration of Lori Shively as described in the above tentative ruling. If Plaintiff files any supplemental papers, then Defendant is given leave to respond to Plaintiff's supplemental papers as described in the above tentative ruling.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: MWS on 8/25/15 .
(Judge's initials) (Date)

(23)

Tentative Ruling

Re: ***Deborah D. Frascona v. Wal-Mart Stores, Inc.***
Superior Court Case No. 11CECG01029

Hearing Date: Thursday, August 27, 2015 (**Dept. 501**)

Motion: Defendant Wal-Mart Stores, Inc.'s Motion for Relief Pursuant to Code of Civil Procedure Section 473

Tentative Ruling:

To take off calendar the hearing on Defendant Wal-Mart Stores, Inc.'s motion for relief pursuant to Code of Civil Procedure section 473. (Code Civ. Proc., § 916, subd. (a).)

Explanation:

On July 28, 2015, Defendant Wal-Mart Stores, Inc. ("Defendant") filed a motion for relief pursuant to Code of Civil Procedure section 473. Specifically, Defendant seeks an order relieving Defendant from the Court's most recent judgment interlineating costs, or an order awarding Defendant statutory costs of $34,890.53, or an order granting Defendant a rehearing on Plaintiffs Deborah Frascona's and Vincent Frascona's motion to tax Defendant's memorandum of costs, or an order granting a rehearing on the validity of the California Code of Civil Procedure section 998 offer.

However, on March 30, 2015, Defendant filed a notice of appeal of the Court's February 19, 2015 order interlineating the judgment. "Subject to certain exceptions not relevant here, 'the perfecting of an appeal stays proceedings in the trial court upon the judgment or order appealed from or upon the matters embraced therein or affected thereby, including enforcement of the judgment or order, but the trial court may proceed upon any other matter embraced in the action and not affected by the judgment or order." (*Varian Medical Systems, Inc. v. Delfino* (2005) 35 Cal.4th 180, 189 [quoting Code Civ. Proc., § 916, subd. (a).].) "In determining whether a proceeding is embraced in or affected by the appeal, [the court] must consider the appeal and its possible outcomes in relation to the proceeding and its possible results. '[W]hether a matter is "embraced" in or "affected" by a judgment [or order] within the meaning of [section 916] depends on whether postjudgment [or postorder] proceedings on the matter would have any effect on the effectiveness of the appeal.' [Citation.] 'If so, the proceedings are stayed; if not, the proceedings are permitted.' " (*Id.*)

Here, Defendant's motion for relief pursuant to Code of Civil Procedure section 473 is clearly a matter "embraced in or affected by the appeal" because Defendant's motion "directly or indirectly seek[s] to '… vacate or

modify' " the appealed February 19, 2015 order of this Court. (*Id.; Elsea v. Saberi* (1992) 4 Cal.App.4th 625, 629 ["The trial court's power to enforce, vacate or modify an appealed judgment or order is suspended while the appeal is pending.].) Accordingly, this Court has no jurisdiction to rule on Defendant's motion while the appeal is pending and, therefore, takes the hearing on Defendant's motion off calendar.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: MWS on 8/25/15 .
(Judge's initials) (Date)

[29]

Tentative Ruling

Re: ***Seng Moua v. Dena Anne Vera; Ismael Vera; and Does 1 to 50***
Superior Court Case no. 14CECG01032

Hearing Date: August 27, 2015 (Dept. 501)

Motion: Defendants' unopposed motion for terminating sanction against Plaintiff

Tentative Ruling: To grant Defendants' motion for a terminating sanction pursuant to Code of Civil Procedure section 2023.030, subdivision (d)(3). The Court will sign Defendants' proposed order dismissing the action. No monetary sanctions will be imposed. The clerk's office is ordered to dismiss, with prejudice, Plaintiff's entire complaint. Trial date set for January 19, 2016, is vacated, as is the trial readiness hearing set for January 15, 2016, and the mandatory settlement conference set for December 16, 2015.

Explanation:

A party's failure to respond or submit to an authorized method of discovery is a misuse of the discovery process, as is disobeying a court's order to provide discovery. (Code Civ. Proc. §2023.010 (d), (g).) Continued failure to respond to discovery despite a Court order compelling such responses may result in a terminating sanction. (Code Civ. Proc. §2030.290(c); §2023.030(d).) Under CCP §2023.030(d), a terminating sanction may be imposed by an order dismissing the action, as requested here.

A sanctioned party's history as a repeat offender is not only relevant, but significant, in deciding whether to impose terminating sanctions for discovery violations. (*Liberty Mut. Fire Ins. Co. v. LcL Adm'rs, Inc*. (2008) 163 Cal.App.4th 1093.) Terminating sanctions for discovery violations are to be used sparingly, only when the trial court concludes that lesser sanctions would not bring about the compliance of the offending party. (*R.S. Creative, Inc. v. Creative Cotton, Ltd.* (1999) 75 Cal.App.4th 486, 496.) Terminating sanctions for persistent noncompliance with discovery requirements has been upheld in numerous cases. (See, e.g., *Van Sickle v. Gilbert* (2011) 196 Cal.App.4th 1495, 1516 [no abuse of discretion in imposing terminating sanction where defendant failed to respond to plaintiff's numerous special interrogatories and demands for production of documents, failed to respond to plaintiff's motion to compel discovery, failed to obey a court order to provide discovery, and failed to respond to demands for production even after filing a motion for relief from default]; *Steven M. Garber & Assoc. v. Eskandarian* (2007) 150 Cal.App.4 th 813, 821-822 [terminating sanctions justified where party ordered by trial court to respond to discovery requests failed to respond, failed to pay monetary sanctions, and "disappear[ed] in the midst of a pending case"]; *Lang v. Hochman* (2000) 77 Ca.App.4th 1225, 1247 [sanctions striking defendant's answer

and dismissing his cross-complaint were proper, where both discovery referee and trial court found that defendant's lack of diligence in complying with discovery orders was willful, tactical, egregious, and inexcusable, and lesser sanctions had not produced requested documents]; see also *Doppes v. Bentley Motors* (2009) 174 Cal.App.4th 967, 992; *Liberty Mut. Fire Ins. Co. v. LcL Adm'rs, Inc*. (2008) 163 Cal.App.4th 1093; *Parker v. Wolters Kluwer U.S., Inc.* (2007) 149 Cal.App.4th 285, 300.)

In the case at bar, Plaintiff failed to respond to Defendants' discovery requests or Defendants' meet and confer efforts, even with Defendants' having extended the deadline for Plaintiff's answers as per Plaintiff's request, and to obey a Court order to provide responses to Defendants' discovery requests. Plaintiff, in fact, has failed to participate at all in his own action since his original filing of the complaint. Plaintiff appears also to have been steadily unresponsive to his counsel's many and varied attempts to contact Plaintiff. Plaintiff has supplied no justification for what appears to be a willful violation of the discovery statutes. Plaintiff has been unresponsive to the monetary sanction imposed against him, as well as to this Court's order to provide discovery responses. In light of the foregoing, as well Plaintiff's prolonged absence from this action, Plaintiff's failure to maintain contact with his own counsel, and the lack of opposition to Defendants' motion, Defendants' motion is granted.

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: MWS on 8/26/15 .
(Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***William E. Johnson and Mala Doreen Johnson v. California Department of Transportation and California Highway Patrol***
Superior Court Case No. 13 CECG 02003

Hearing Date: August 27, 2015 **(Dept.501)**

Motions: Impose Protective Order and file supporting declarations under seal

Tentative Ruling:

To waive the requirements of Local Rule 2.1.17. To grant the motion to seal. To grant the motion seeking a protective order on the conditions stated infra. No sanctions were requested.

Explanation:

CCP § 2025.420 states in relevant part:

(a) Before, during, or after a deposition, any party, any deponent, or any other affected natural person or organization may promptly move for a protective order. The motion shall be accompanied by a meet and confer declaration under Section 2016.040.

(b) The court, for good cause shown, may make any order that justice requires to protect any party, deponent, or other natural person or organization from unwarranted annoyance, embarrassment, or oppression, or undue burden and expense. This protective order may include, but is not limited to, one or more of the following directions:

(1) That the deposition not be taken at all.

(2) That the deposition be taken at a different time.

(g) If the motion for a protective order is denied in whole or in part, the court may order that the deponent provide or permit the discovery against which protection was sought on those terms and conditions that are just.

(h) The court shall impose a monetary sanction under Chapter 7 (commencing with Section 2023.010) against any party, person, or attorney who unsuccessfully makes or opposes a motion for a protective order, unless it finds that the one subject to the sanction acted with substantial justification or that other circumstances make the imposition of the sanction unjust.

The moving party has met its burden of proof. The deponent is too ill to be deposed at this time. See Declarations of Drs. Sam and Moffett. Indeed, the

Plaintiffs are in agreement. See Declaration of Cornwell at ¶6. Therefore, the motion will be granted pursuant to CCP § 2025.420(b)(2)—that the deposition be taken at a different time. Defendant's counsel is to "meet and confer" every 90 days with Plaintiffs' counsel regarding the deponent's condition and if he is able to be deposed.

But, Plaintiffs' request for the deponent's medical records is denied. They are protected by a constitutional right of privacy. [*John B. v. Sup.Ct. (Bridget B.)* (2006) 38 C4th 1177, 1198] The fact that the deponent's medical condition prevents his deposition at this time does not constitute "good cause" for disclosure. Also denied is Plaintiffs' request for an IME. There is no statutory authority for such a request.

Pursuant to California Rules of Court, Rule 3.1312, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: MWS on 8/25/15 .

(Judge's initials) (Date)

(6)

Tentative Ruling

Re: ***Avalos v. Foster Poultry Farms***
Superior Court Case No.: 11CECG00784

Hearing Date: August 27, 2015 (**Dept. 501**)

Motion: Continued motion to certify class action

Tentative Ruling:

To deny. Counsel are invited to appear telephonically to discuss the issues, particularly the PAGA claim, which is the major problem for the court.

Explanation:

226/PAGA class

The proposed third amended complaint still contains the overbroad definition of the Labor Code Private Attorney's General Act of 2004 ("PAGA") class to include "violations . . . *without limitation*, the failure to include the employer address and the failure to include the start date of each pay period." (Proposed third amended complaint, ¶5.) [Italics added.] The PAGA claims are still very broad and not limited to Labor Code section 226, but extend by the above language to *any* PAGA claim. (Amended stipulation of class settlement and release, p. 7:7-15.)

Nor does the evidence submitted support the broad release. The only evidence submitted deals with the failure to include the address and start of the pay period on the paystub. Labor Code section 226 encompasses the right to inspect records pertaining to an employee's employment, upon reasonable request, no later than 21 calendar days from the date of the request (Lab. Code, § 226, subds. (b), (c)), which would be waived by the proposed settlement agreement.

Further, the release in the settlement agreement purports to release everything that could be brought by a private employee under the PAGA. (See Lab. Code §2699.5, for examples of such claims.)

There also is insufficient evidence to support the damage calculations for of the donning and doffing class. Plaintiffs have submitted the declaration of Dr. Tamorah Hunt for this purpose. One of the things she relies on in coming to her opinion of the damages sustained by this class is a time and motion study conducted by Dr. Jeffrey Fernandez, yet it is not attached to her declaration or included with the documents filed by Plaintiffs. Consequently, her opinion is

based largely on hearsay, and cannot be relied upon to support the amount of damage claims. (*Garibay v. Hemmat* (2008) 161 Cal.App.4th 734, 742-743.)

Pursuant to California Rules of Court, rule 3.1312(a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: MWS on 8/25/15.
(Judge's initials) (Date)

Tentative Rulings for Department 502

(5)

Tentative Ruling

Re: ***Andrew Warren v. Pam Ahlin, Cliff Allenby, Kevin Heart, Audrey King, Brandon Price and Jack Carter***
Superior Court Case No. 15 CECG 00978

Hearing Date: August 27, 2015 (**Dept. 502**)

Motion: By Defendants to strike the claim for punitive damages

Tentative Ruling:

Oral argument on this motion will be continued to September 10, 2015 at 3:30 p.m. in Dept. 502 to allow time for the tentative ruling to be mailed to the Plaintiff. His address is:

> Andrew Warren, CO-000143-8, Unit 11, Coalinga State Hospital, 24511 West Jayne Avenue, P. O. Box 5003, Coalinga, CA 93210-5004.

To grant the motion without leave to amend.

Explanation:

Background

On March 16, 2015, Plaintiff, an involuntary resident at Coalinga State Hospital filed a complaint seeking damages for injuries he received when another involuntary resident attacked him on December 12, 2014. On July 1, 2015 Defendants filed an Answer and a motion to strike. No opposition has been filed.

Defendants seek to strike the claims for punitive damages set forth in the prayer; specifically at pages 21 and 22, ¶¶ H and I on the grounds that the specific dollar amount of damages is set forth. This is contrary to Civil Code § 3295(e). In addition, Defendants seek to strike the claim for "triple punitive damages" on the grounds that the Plaintiff has borrowed this phrase from Civil Code § 3345. However, this section is applicable only to causes of action for unfair or deceptive acts or practices or unfair methods of competition.

Merits

Defendants are correct. The *amount or amounts* of punitive damages sought may **not** be alleged (Civil Code § 3295(e)); and if alleged, are subject to motion to strike. Second, Civil Code § 3345 is inapplicable to injuries in the form of physical assault. It applies to actions brought pursuant to the unfair competition laws. See *Clark v. Superior Court* (2010) 50 Cal.4th 605 at 610. Therefore, the motion will be granted and the claims for punitive damages set forth at pages 21 and 22 ¶¶ H and I of the complaint will be stricken without leave to amend.

Pursuant to California Rules of Court, Rule 3.1312, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling

Issued By: DSB on 8-26-15 .

(Judge's initials) (Date)

(5)

Tentative Ruling

Re: ***Jane Doe No. 1 v. Estate of Lance Clement et al.***
Superior Court Case No. 14 CECG 03347

Jane Doe No. 2 v. Estate of Lance Clement et al.
Superior Court Case No. 14 CECG 03348

Jane Doe No. 3 .v Estate of Lance Clement et al.
Superior Court Case No. 15 CECG 00174

Hearing Date: August 27, 2015 (**Dept. 502**)

Motion: Demurrer by Orange Center Elementary School District to the First Amended Complaint filed in Case No. 15 CECG 00174

Tentative Ruling:

To continue the hearing to September 16, 2015 in Dept. 501 for Case No. 15 CECG 00174. These three cases were mistakenly consolidated for all purposes on July 31, 2015. The stipulation and order consolidated these three cases for discovery purposes only. The Clerk's Office exceeded the scope of the order and must undo the consolidation.

Pursuant to California Rules of Court, Rule 3.1312, subd. (a) and Code of Civil Procedure section 1019.5, subd. (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: DSB on 8-26-15 .
(Judge's initials) (Date)

Tentative Rulings for Department 503

(20) **Tentative Ruling**

Re: ***Progressive West Insurance Co. v. Lewis***
Superior Court Case No. 13CECG01600
Consolidated with ***Pannu v. Lewis***
Superior Court Case No. 14CECG01198

Hearing Date: **August 27, 2015 (Dept. 503)**

Motion: Motion to compel discovery responses from plaintiffs Taranvir Pannu and Baj Anlakh

Motion to compel Taranvir Pannu's attendance at deposition

Tentative Ruling:

In light of the fact that objection-free responses have been served, to deny as moot, but to impose monetary sanctions in favor of defendant Yvette Lewis in the amount of $335 against Taranvir Pannu and Baj Anlakh (Code Civ. Proc. §§ 2023.010(d); 2023.030(a)), to be paid within 30 days of service of the order by the clerk.

To take off calendar the motion to compel deposition attendance without prejudice. (Local Rule 2.1.17.)

Explanation:

After the motion to compel had already been filed, the responding parties served objection-free responses. accordingly, the motion is moot with regards to the service of responses. However, reasonable sanctions will be imposed since responses were not served until after the motion to compel had been filed. (Code Civ. Proc. §§ 2023.010(d), 2023.030(a).)

The motion to compel Taranvir Pannu's appearance at deposition should not have been filed without first complying with Local Rule 2.1.17.

Pursuant to Cal. Rules of Court, Rule 3.1312(a) and Code Civ. Proc. § 1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 8-25-15 .
(Judge's initials) (Date)

03

Tentative Ruling

Re: ***Whitaker v. California Department of Corrections***
Case No. 15 CE CG 01029

Hearing Date: August 27th, 2015 (Dept. 503)

Motion: Petition for Relief from Claim Filing Requirement

Tentative Ruling:

To continue the hearing on the petition for relief from the claim filing requirement to September 24th, 2015 at 3:30 p.m. in Department 503.

Explanation:

On May 15, 2015, petitioners' check for their filing fee was returned for insufficient funds. The clerk sent out notice of the returned check on June 15th, 2015 with a request for full payment within 20 days. However, the court did not receive payment from petitioners' counsel until August 26th, 2015, the day before the hearing on the petition. Therefore, in light of the recent payment of filing fees, the court will continue the matter to September 24th, 2015 at 3:30 p.m. in Department 503 to allow the court sufficient time to consider the merits of the petition.

Pursuant to CRC 3.1312 and CCP §1019.5(a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 8-25-15 .
(Judge's initials) (Date)

(28) ***Tentative Ruling***

Re: **Moreno v. Carmel Crest Apartments, et al.**

Case No. 14CECG02122

Hearing Date: August 27, 2015 (Dept. 503)

Motion: By Defendant Lexington Square Apartments Partnership dba Carmel Crest Apartments Motion for Summary Judgment.

Tentative Ruling:

To deny the Motion for Summary Judgment

Explanation:

To obtain summary judgment, "all a defendant needs to do is to show that the plaintiff cannot establish at least one element of the cause of action." *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853. If a defendant makes this showing, the burden shifts to the plaintiff to demonstrate that one or more material facts exist as to the cause of action or as to a defense to a cause of action. (CCP § 437(c)(p)(2).) The court examines affidavits, declarations and deposition testimony as set forth by the parties, where applicable. (*DeSuza v. Andersack* (1976) 63 Cal.App.3d 694, 698.) Any doubts about the propriety of summary judgment are to be resolved in favor of the opposing party. (*Yanowitz v. L'Oreal USA, Inc.* (2003) 106 Cal.App.4th 1036, 1050.)

A court will "liberally construe plaintiff's evidentiary submissions and strictly scrutinize defendant's own evidence, in order to resolve any evidentiary doubts or ambiguities in plaintiff's favor." (*Johnson v. American Standard, Inc.* (2008) 43 Cal.4th 56, 64.)

California Civil Code §1714, subdivision (a) requires owners to exercise ordinary care in the management of their property. When a portion of the premises is in the common area, a duty is imposed upon the property owner to use ordinary care to keep that particular portion of the premises in a safe condition. (*Harris v. Joffe* (1946) 2 Cal.2d 418, 423.) A plaintiff suing for premises liability has the burden of proving that the owner had actual or constructive knowledge of a dangerous condition in time to correct it. (*Ortega v. K-Mart*

Corp. (2001) 26 Cal.App.4th 1200, 1206.) If a plaintiff can demonstrate that an inspection was not made within a particular period of time prior to the accident, they may raise an inference the condition did exist long enough for the owner to have discovered it. (*Id.* at 1212-13.)

Defendant here relies on the declarations of their property manager and maintenance worker to the effect that they conducted inspections of the stairs of the apartment complex, though there is no detail as to what these inspections entailed or what the standard for such inspections should be. Defendant has also asserted that Plaintiff has no evidence that there was any constructive notice on the part of Plaintiff that there was a dangerous condition, relying on incomplete answers in Plaintiff's discovery responses. (UMF Nos. 14-17.) The answers provided by Plaintiff were ambiguous and it is, at best, unclear if that suffices to allow Defendant to meet its burden of proof. (*Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 580-81 (ambiguous answers also included affirmative admission that there was no evidence defendant behaved inappropriately).) Assuming for the sake of argument that Defendant had carried its burden, it appears that Plaintiff just meets his burden of showing a genuine dispute of material fact.

Plaintiff largely relies on the declaration of his expert, Mr. Jerry Herzick, who opines that "a reasonable inspection would have uncovered exposed pieces of rebar and any cracks that were present on the bottom side of the stair and would have replaced that stair." (Herzick Declaration, ¶13.) He concludes that Carmel Crest "had notice that the subject stairs were not properly constructed" based on the cracks in the other stairs. (Herzick Declaration, ¶9.)

Defendant objects to the declaration on the grounds that he did not visit the building site, and that he is not a qualified expert. The Court finds that his curriculum vitae attached to his declaration qualifies him as an expert. The other objections to his declaration largely go to the weight of his opinion and not to the admissibility. Therefore, the objections are overruled.

Based on Herzick's declaration, there is a question of fact as to whether Defendant's activities constituted actual inspections prior to the incident. Further, the Supreme Court has said that "It remains a question of fact for the jury whether, under all the circumstances, the defective condition existed long enough so that it would have been discovered and remedied by an owner in the exercise of reasonable care." (*Ortega*, *supra*, 26 Cal.4th at 1213.)

The objections interposed by Plaintiff and Defendant all go to the weight of the evidence and not to admissibility. Therefore all the objections are overruled.

Because it is unclear that Defendant has met its burden of persuasion, and because Plaintiff has presented evidence that a reasonable inspection did not occur, the Motion for Summary Judgment is denied.

Pursuant to California Rules of Court, rule 3.1312, subdivision (a), and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 8-25-15.
(Judge's initials) (Date)

(23)

Tentative Ruling

Re: ***Estrella Homeowners Association v. D.R. Horton, Inc. – Fresno***
Superior Court No. 14CECG01230

Hearing Date: Thursday, August 27, 2015 (**Dept. 503**)

Motion: Plaintiff Estrella Homeowners Association's Motion to Lift Stay

Tentative Ruling:

To deny Plaintiff Estrella Homeowners Association's motion to lift stay.

Explanation:

On July 23, 2014, the Court granted Defendant D.R. Horton, Inc. – Fresno's ("Defendant") motion to stay this action pursuant to Civil Code section 930, subdivision (b) and ordered that this action be stayed until the prelitigation requirements of Civil Code sections 910 through 938 have been satisfied. Now, in the instant motion, Plaintiff Estrella Homeowners Association ("Plaintiff") moves to lift the stay imposed in this action on the ground that Defendant has refused to strictly comply with the prelitigation requirements. (See Civ. Code, § 930, subd. (a) ["The time periods and all other requirements in [Civil Code sections 910 through 938] are to be strictly construed, and …, shall govern the rights and obligations under this title. If a builder fails to act in accordance with this section within the timeframes mandated, unless extended by the mutual agreement of the parties …, the claimant may proceed with filing an action."].)

Specifically, Plaintiff contends that Defendant has refused to strictly comply with the prelitigation requirements of Civil Code section 918. Civil Code section 918 provides, in relevant part, that: "The homeowner may alternatively request, at the homeowner's sole option and discretion, that the builder provide the names, addresses, telephone numbers, and license numbers for up to three alternative contractors who are not owned or financially controlled by the builder and who regularly conduct business in the county where the structure is located. … . Within 35 days after the request of the homeowner for alternative contractors, the builder shall present the homeowner with a choice of contractors."

First, Plaintiff argues that, even though it properly requested that Defendant provide three alternative contractors pursuant to Civil Code section 918, two of the three contractors that Defendant provided are not true alternatives because they are alter egos of each other. In opposition, Defendant argues that it has complied with Civil Code section 918 because the two alternative contractors owned by the same person are separate corporations with separate and distinct contractor's licenses and Plaintiff has failed to demonstrate that the two contractors are alter egos.

The Court agrees with Defendant. "Ordinarily, a corporation is regarding as a legal entity separate and distinct from its stockholders, officers and directors. Under the alter ego doctrine, however, where a corporation is used by an individual or individuals, or by another corporation, to perpetuate fraud, circumvent a statute, or accomplish some other wrongful or inequitable purpose, a court may disregard the corporate entity and threat the corporation's acts as if they were done by the persons actually controlling the corporation[.]" (*Toho-Towa Co., Ltd. v. Morgan Creek Productions, Inc.* (2013) 217 Cal.App.4th 1096, 1106.) "Factors for the trial court to consider [in deciding whether to apply the alter ego doctrine and disregard the corporate identity] include the commingling of funds and assets of the two entities, identical equitable ownership in the two entities, use of the same offices and employees, disregard of corporate formalities, identical directors and officers, and use of one as a mere shell or conduit for the affairs of the other. [Citation.] 'No one characteristic governs, but the courts must look at all of the circumstances to determine whether the doctrine should be applied.' " (*Troyk v. Farmers Group, Inc.* (2009) 171 Cal.App.4th 1305, 1342.)

Here, Plaintiff has demonstrated that Mark Knight is the responsible managing officer, chief executive officer, president, and agent for service of process for both Home Maintenance & Inspection (HMI), Inc. and Top Drawer Construction, Inc. (Plaintiff's Motion to Lift Stay, Exhibit D; Defendant's Opposition to Plaintiff's Motion to Lift Stay, Declaration of Karyn N. Chandler, ¶¶ 5-8 and Exhibits A-D.) However, there is evidence that suggests that the two corporations do not have the same officers and do not have the same offices. (Plaintiff's Motion to Lift Stay, Exhibit D.) Additionally, Plaintiff has failed to provide any evidence showing that the two corporate contractors commingle funds or assets, that there is identical equitable ownership of both corporations, that the corporations have the same, or share, employees, that the corporations disregard corporate formalities, and that one corporation is a shell or conduit for the affairs of the other corporation. Therefore, based on the evidence before the Court, the Court determines that Home Maintenance & Inspection (HMI), Inc. and Top Drawer Construction, Inc. are not alter egos of each other. Accordingly, since Home Maintenance & Inspection (HMI), Inc. and Top Drawer Construction, Inc. are separate corporations that each have their own individual contractor's license, Home Maintenance & Inspection (HMI), Inc. and Top Drawer Construction, Inc. each count as one "alternative contractor" under Civil Code section 918. (Defendant's Opposition to Plaintiff's Motion to Lift Stay, Declaration of Karyn N. Chandler, ¶¶ 5-8 and Exhibits A-D.)

Second, in reply, Plaintiff argues that Defendant failed to strictly comply with Civil Code section 918 because Defendant failed to provide three contracts who are not financially controlled by Defendant and who regularly conduct business in Fresno County. Nevertheless, Plaintiff provides absolutely no evidence to support this contention. Instead, Plaintiff argues that, since discovery is stayed, it is Defendant's burden to establish that the three contractors provided are financially independent from Defendant and regularly conduct business in

Fresno County. However, since this is Plaintiff's motion to lift the stay of this action due to Defendant's failure to strictly comply with Civil Code section 918, it is Plaintiff's burden to provide evidence and prove that Defendant did not strictly comply with Civil Code section 918 because one or more of the three contractors Defendant provided is financially controlled by Defendant and/or does not regularly conduct business in Fresno County. (Evid. Code, § 500 ["Except as otherwise provided by law, a party has the burden of proof as to each fact the existence or nonexistence of which is essential to the claim for relief or defense that he is asserting."]; see also *Standard Pacific Corp. v. Superior Court* (2009) 176 Cal.App.4th 828, 834 ["[T]he *homeowner* must bear the burden of showing that he or she need not follow [the prelitigation requirements of Civil Code sections 910 through 938]."].)

Accordingly, the Court finds that Defendant complied with Civil Code section 918 when it provided Plaintiff with the names, addresses, telephone numbers, and license numbers of Home Maintenance & Inspection (HMI), Inc., JLS Environmental Services, Inc., and Top Drawer Construction, Inc. dba Qwik Response Disaster Control & Construction. (Plaintiff's Motion to Lift Stay, Exhibit C.) Therefore, the Court denies Plaintiff's motion to lift stay.

Pursuant to California Rules of Court, rule 3.1312(a) and Code of Civil Procedure section 1019.5, subdivision (a), no further written order is necessary. The minute order adopting this tentative ruling will serve as the order of the Court and service by the clerk will constitute notice of the order.

Tentative Ruling
Issued By: A.M. Simpson on 8-25-15 .
(Judge's initials) (Date)